REMARKS

In the Office Action mailed October 5, 2006, the claims were subjected to a 288-way restriction, with the Examiner contending that the claims contain at least 288 separate and patentably distinct inventions.

Specifically, the Examiner is requiring restriction of the following alleged invention groups:

- Groups 1-287: (Claims 1-21), which the Examiner characterizes as "drawn to [a] mycobacterial serine/threonine kinase inhibitor selected from [the] group of compounds 1-287 and method[s] of use using [sic] [the] compound selected from compounds 1-287"; and

- Groups $288R^1$ to $288R^{17}$: (Claims 16-22 and 23), which the Examiner characterizes as "drawn to [a] mycobacterial serine/threonine protein kinase inhibitor compound selected from one each of the variables R^1 to R^{17}".

Apparently, the claims have been subjected to at least a 288-way restriction, with the Examiner regarding each of the specified compounds recited in Claims 12 and 15 as separately patentable inventions, despite the fact that Claims 1-12, and 16-21, which are included in the same invention group, are directed to *methods*. Additionally, the Examiner apparently considers each of the individual species encompassed within formula (I) of Claim 22 to be separately patentable inventions, which the Examiner designates as restriction group "$288R^1$ to $288R^{17}$.

The Examiner attempts to support this restriction by cursorily noting:

> "The inventions are distinct, each from the other because of the following reasons: Each of the compounds are structurally and patentably distinct." (Office Action, page 2.)

Applicants traverse the restriction in its entirety and request reconsideration in view of the reasons set forth below.

Applicants submit that the Examiner's reasoning in applying this restriction is flawed. Most notably, Claims 1-13 are directed to *methods* of treating viral/bacterial induced diseases by administering an inhibitor of a mycobacterial serine/threonine protein kinase. There are not 288 separate method inventions represented in Claims 1-13; rather, Claims 1-13 represent 1 invention group with 288 explicitly recited *species*. This is readily apparent upon review of Claims 1-10, which do not even recite a particular compound. Claim 1 recites:

> "1. A method of treating a virally or bacterially induced disease comprising administering an effective amount of an inhibitor of a mycobacterial serine/threonine kinase to a patient in need thereof."

In other words, the Examiner is improperly reading limitations into the claims for sake of restriction. Applicants ask the Examiner to identify the 288 separate inventions based on the wording of Claim 1 above. Applicants submit that what is recited in Claims 1-12 is one invention group: methods of treating virally or bacterially induced disease by administering an inhibitor of mycobacterial serine/threonine kinase. The Applicant then specifically sets forth in dependent Claim 12 individual species that may be used in the method. The fact that these are *species of the method* and not separate inventions is further evidenced by the claim structure itself: note that Claim 12 *limits* Claims 1 and 8. In other words, Claims 1 and 8 include *additional* embodiments/species above and beyond those recited in Claim 12.

Second, Applicants ask the Examiner to note that Claims 16-21, which are directed to *methods of identifying compounds* useful for the treatment of mycobacterial infections, are patentably distinct from Claims 1-12, which recite methods of treating virally or bacterially induced disease by administering an inhibitor of mycobacterial serine/threonine kinase. Moreover, under the Examiner's current restriction, Applicants would be forced to explicitly recite in Claims 16-21 the actual compound (selected from the 288 species recited in Claim 12) that is to be identified, which would, of course, render the claims nonsensical.

In view of the foregoing remarks, Applicants submit that a more proper restriction under US law would be as follows:

- Group I (Claims 1-12), directed to methods of treating viral/bacterial induced disease by administering an inhibitor of mycobacterial serine/threonine protein kinase;
- Group II (Claims 13-15), directed to mycobacterial serine/threonine protein kinase inhibiting compounds (4,5,6,7-tetrahydrobenzo[b]thiophene compounds) having a general formula (designated formula I) and pharmaceutical compositions comprising the compound useful for treating mycobacterial infections;
- Group III (Claims 16-21), directed to methods of identifying compounds useful for the treatment of mycobacterial infections;
- Group IV (Claim 22), directed to mycobacterial serine/threonine protein kinase inhibiting compounds (benzo[g]quinoxaline compounds) having a general formula (designated formula II); and
- Group V (Claim 23), directed to methods of treating mycobacterial infections.

The Examiner could, at his option, further require the election of a *single species* of compound for initial examination purposes if Group I, II, IV, or V is elected.

Conclusion and Provisional Election

Applicants submit that in view of the foregoing remarks it is clear there is no statutory or regulatory basis for the restriction set forth by the Examiner. Applicants request that the restriction requirement of the Office Action of October 5, 2006 be withdrawn and a new restriction be issued taking into account the Applicants remarks and MPEP chapter 800.

Although, for reasons set forth above, Applicants believe that the restriction is improper and uncalled for, and without in any way acquiescing in the reasons for the requirements set forth in the Office Action, but in order to be fully responsive to the Office Action, Applicants provisionally elect for examination the claims of Group 1, i.e., Claims 1-21 and further elect the compound 237, i.e., 2-(Cyclopropanecarbonyl-amino)-4,5,6,7-tetrahydro-benzo[b]thiophene-3-carboxylic acid amide.

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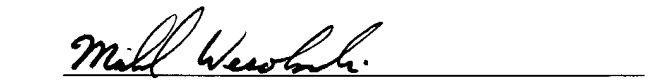

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